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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

AMY ROBERTS, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

CARRIER IQ, INC., a Delaware
corporation, HTC AMERICA, INC. and
DOES 1 through 100, Inclusive,

Defendants.

CASE NO.:

CLASS ACTION

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF**

- (1) Violation of the Federal Wiretap Act, 18 U.S.C. § 2511
- (2) Violation of the Stored Electronic Communications Act, 18 U.S.C. § 2701
- (3) Violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030
- (4) Violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et seq.

1 Plaintiff, Amy Roberts, on behalf of herself and all others similarly situated, by and
2 through her undersigned counsel, brings this class action suit against CARRIER IQ, INC.
3 ("CARRIER IQ" or "CIQ"), HTC America, Inc. ("HTC") and DOES 1 through 100, inclusive,
4 (collectively "Defendants").

5 NATURE OF ACTION AND FACTUAL ALLEGATIONS

- 6 1. This is a Class Action lawsuit brought by, and on behalf of, similarly situated individuals
7 who purchased and used HTC cellular phones running the Android operating system
8 from November 23, 2009 through November 23, 2011 ("Class Period"), which contained
9 the software program Carrier IQ ("monitoring software") developed by Carrier IQ, Inc.
10 ("CIQ") on the devices.
- 11 2. Upon information and belief, each and every HTC cellular phone running the Android
12 operating system that was purchased in the United States during the Class Period, came
13 equipped with the monitoring software preinstalled on the phone.
- 14 3. Upon information and belief, the monitoring software was preinstalled on Plaintiff's
15 cellular phones by HTC and/or CIQ, respectively, and was provided to HTC by CIQ for
16 that purpose.
- 17 4. The monitoring software was loaded onto Plaintiff's cellular phones prior to the
18 Plaintiff's purchases of her cellular phones, and was loaded onto the subject phones
19 without the Plaintiff's knowledge, consent or permission.
- 20 5. In fact, even after Plaintiff's purchased her cell phones, she was not told of the presence
21 of the monitoring software on her phones.
- 22 6. Upon information and belief, CIQ developed the monitoring software to intercept, track,
23 record, and log the activities, keystrokes, button presses, and searches, including, but
24 not limited to, the user's searches, emails, dialed phone numbers, location, text
25 messages, and Google searches.
- 26 7. The monitoring software is known in technical circles as a "rootkit," which is software
27 that enables continued privileged access to a computer while actively hiding its
28

1 presence from administrators by subverting standard operating system functionality or
2 other applications. (<http://en.wikipedia.org/wiki/Rootkit>)

3 8. Defendants have designed the monitoring software to run on Plaintiff's cellular phones
4 in such a manner as to be completely undetectable.

5 9. Defendants have designed the monitoring software in such a manner that Plaintiff was
6 not given the option to opt out of the "services" it provides. Moreover, Plaintiff was
7 unable to opt out of the "services" provided.

8 10. None of the information Defendants obtained via the monitoring software was obtained
9 with the Plaintiff's knowledge, permission or consent.

10 11. Upon information and belief, the monitoring software performed as intended by CIQ
11 and HTC during usage during the Class Period, that is the monitoring software remained
12 hidden and without permission from Plaintiff intercepted, recorded and logged nearly
13 all of Plaintiff's activities and communications and transmitted some, or all, of this data
14 to CIQ or HTC without Plaintiff's knowledge, consent, or permission.

15 12. HTC and CIQ configured the monitoring software such that it did not notify Plaintiff of its
16 activities via "permissions" requests or otherwise.

17 13. The aforementioned manner in which the monitoring software was designed, installed
18 and configured is contrary to the "Privacy Policy" statements maintained by HTC and
19 CIQ.

20 14. The monitoring software was designed to evade detection and did so until the end of
21 November 2011, when independent security researcher, Trevor Eckhart ("Eckhart"),
22 discovered the monitoring software's existence and activities. Eckhart posted his
23 findings on his website, despite the threat of litigation by CIQ intended to suppress the
24 public disclosure of its monitoring software and keep its activities concealed from the
25 Plaintiff.

26 15. Defendants' willful and knowing actions violated the Federal Wiretap Act, the Stored
27 Electronic Communication Act, and the Federal Computer Fraud and Abuse Act. The
28

1 Plaintiff seeks damages and injunctive relief under these statutes on behalf of the entire
2 Class for these violations.

3 **THE PARTIES, JURISDICTION AND VENUE**

4 16. At all times material, Plaintiff, Amy Roberts, was a resident of Los Angeles County,
5 California and is otherwise *sui juris*.

6 17. Defendant, Carrier IQ, Inc., is a foreign corporation with its principal place of business
7 located at 1200 Villa Street, Suite 200 Mountain View, California 94041.

8 18. Defendant, HTC America, Inc., is a foreign corporation with its principal place of business
9 located at 13920 S.E. Eastgate Way, Suite 400, Bellevue, Washington 98005. Defendant,
10 HTC America, Inc. is authorized to conduct business, and conducts business, in the State
11 of California.

12 19. Plaintiff is unaware of the true names of DOES 1 through 100, who are individuals or
13 entities who conspired with or aided and abetted HTC and/or CIQ or otherwise involved
14 in and liable for the installation, use, and maintenance of the software on Plaintiff's and
15 the proposed class' mobile devices and operating to intercept Plaintiff's and proposed
16 class' private and sensitive data without mobile phone user knowledge or consent.
17 When the identity of these individuals or entities sued as Doe defendants are identified,
18 Plaintiff reserves the right to amend her complaint to name such parties in this Action to
19 the extent feasible.

20 20. Defendants committed tortious acts within the State of California and caused injury to
21 persons and property within the State each and every time Defendants unlawfully
22 recorded, or captured, a keystroke Plaintiff made on her cellular phones, and/or
23 recorded the location of Plaintiff and Plaintiff's cellular phones and/or recorded and
24 stored various other information from Plaintiff's cellular phones without Plaintiff's
25 consent. Defendants' contacts with California constitute constitutionally sufficient
26 minimum contacts such that subjecting Defendants to personal jurisdiction in this State
27 does not offend traditional notions of fair play and substantial justice.

28 21. Venue properly lies in this District pursuant to 28 U.S.C. § 1391 because Defendant

Carrier IQ, Inc. is headquartered in this District and/or because the improper conduct alleged in this Complaint occurred primarily in, and was directed from, this District.

22. This Court has subject matter jurisdiction over this action and Defendants pursuant to 28 U.S.C. § 1331 because this action arises under federal statutes, namely the Federal Wiretap Act, 18 U.S.C. § 2511, the Stored Electronic Communication Act, 18 U.S.C. § 2701, and the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 and pursuant to 28 U.S.C. § 1332(d) because the amount in controversy exceeds \$5,000,000.

FACTUAL BACKGROUND

23. Plaintiff, Amy Roberts, during the Class Period, purchased and used a cellular phone running the Android operating system that was manufactured by HTC during the Class Period.

24. During the Class Period, Plaintiff's cellular phones contained the monitoring software developed by CIQ.

25. Plaintiff was unaware of the presence of the monitoring software on her cellular phones.

26. Plaintiff was never told by any of the Defendants of the presence of the monitoring software on her cellular phones.

27. The monitoring software was placed on Plaintiff's cellular phones by the Defendants without the knowledge, consent and permission of Plaintiff.

28. The monitoring software functioned as intended and intercepted, recorded, and logged nearly all of Plaintiff's activities and communications and transmitted some, or all, of this data to CIQ and HTC without Plaintiff's knowledge, consent or permission.

29. The monitoring software unlawfully intercepted, tracked, recorded, and logged Plaintiff's activities, keystrokes, button presses, and searches, including but not limited to, Google searches, emails, phone numbers dialed, location, and text messaging contents and transmitted some, or all, of this data to CIQ and HTC without Plaintiff's knowledge, consent or permission.

1 30. Plaintiff was unaware of the presence of the monitoring software on her cellular phones
2 until the end of November 2011, when independent security researcher, Trevor Eckhart
3 discovered and publicized the monitoring software's existence and activities.

4 31. Plaintiff has been damaged by Defendants' continuous and secretive monitoring,
5 transmission and storage of Plaintiff's cellular phone activities.

6 **CLASS ACTION ALLEGATIONS**

7 **THE CLASS**

8 32. Plaintiff seeks to represent on a nationwide class ("Nationwide Class") basis all persons
9 similarly situated, to wit: all persons in the United States who purchased and used HTC
10 America, Inc. ("HTC") cellular phones running the Android operating system from
11 November 23, 2009 through November 23, 2011 ("Class Period"), which contained the
12 software program Carrier IQ ("monitoring software") developed by Carrier IQ, Inc.
13 ("CIQ") on the devices and unlawfully monitored, tracked, recorded, logged and
14 transmitted the activities, keystrokes, button presses, and searches of the subject
15 cellular phone users to CIQ and/or HTC.

16 33. Plaintiff also brings certain of the claims on behalf of herself and a portion of the class
17 described as the California subclass ("California Subclass"), defined as follows: All
18 consumers residing within the State of California who purchased and used a HTC
19 America, Inc. ("HTC") cellular phones running the Android operating system from
20 November 23, 2009 through November 23, 2011 ("Class Period"), which contained the
21 software program Carrier IQ ("monitoring software") developed by Carrier IQ, Inc.
22 ("CIQ") on the devices and unlawfully monitored, tracked, recorded, logged and
23 transmitted the activities, keystrokes, button presses, and searches of the subject
24 cellular phone users to CIQ and/or HTC.

25 34. Excluded from the prospective Nationwide Class and California Subclass are the
26 Defendants' employees and the employees of the law firm of Litigation Partners, P.L.

27 35. Plaintiff seeks certification pursuant to Federal Rule of Civil Procedure 23.
28

NUMEROSITY

36. While the exact number of Class Members is unknown to Plaintiff at this time, Plaintiff believes in good faith that they number in the tens, if not hundreds, of thousands based on publicly available sales data for the subject cellular phones. Therefore, the members of the Class are so numerous that joinder of all members is impractical.

37. In addition, upon information and belief, Defendants maintain their cellular phone records and monitoring software records on computerized systems. Therefore, the number and identity of the members of the Class is readily determinable through information already in Defendants' possession that is as yet unavailable to Plaintiff.

PREDOMINANCE AND COMMONALITY

38. The questions of law and fact common to the claims of each Class member overwhelmingly predominate over any questions of law or fact affecting only individual members of the Class as the Defendants acted in a uniform manner to each Plaintiff and no individualized conduct by any Plaintiff or prospective Class Member affects the claims or defenses.

39. Further, the issues relating to the claims of Plaintiff do not vary from the issues relating to the claims of the other members of the Class, making a Class Action the most efficient way to resolve all claims.

40. Certification of the Class under Federal Rule of Civil Procedure 23 is supported by the following questions of law and fact common to the Class:¹

- a. Whether Defendants' unlawful interception, tracking, recording, and logging of their consumers' activities, keystrokes, button presses, and searches, including but not limited to, Google searches, emails, phone numbers dialed, location and text messaging contents and transmission of some, or all, of this data to CIO, and/or HTC without Plaintiff's knowledge, consent or permission violated 18 U.S.C. § 2511 ("The Federal Wiretap Act");

¹ The list of common questions of law and fact is not intended to be exhaustive and by setting forth this summary, Plaintiff does not waive her right to raise other common questions of law and fact.

- 1 b. Whether Defendants' unlawful interception, tracking, recording, and logging of
2 their consumers' activities, keystrokes, button presses, and searches, including
3 but not limited to, Google searches, emails, phone numbers dialed, location and
4 text messaging contents and transmission of some, or all, of this data to CIQ
5 and/or HTC without Plaintiff's knowledge, consent or permission violated 18
6 U.S.C. § 2701 ("The Unlawful Access to Stored Communications Act"); and
7 c. Whether Defendants' unlawful interception, tracking, recording, and logging of
8 their consumers' activities, keystrokes, button presses, and searches, including
9 but not limited to, Google searches, emails, phone numbers dialed, location and
10 text messaging contents and transmission of some, or all, of this data to CIQ
11 and/or HTC without Plaintiff's knowledge, consent or permission violated 18
12 U.S.C. § 1030 ("The Computer Fraud and Abuse Act.")

13 41. Certification of the Class under Federal Rule of Civil Procedure 23 is also supported by
14 the following consideration:

- 15 a. The relatively small amount of damages that members of the Class have suffered
16 on an individual basis would not justify their prosecution of separate lawsuits;
17 b. There are no previously adjudicated actions against Carrier IQ, Inc. and HTC
18 America, Inc. on whether Defendants' interception, tracking, recording, and
19 logging of their consumers' activities, keystrokes, button presses, and searches,
20 including but not limited to, Google searches, emails, phone numbers dialed,
21 location and text messaging contents and transmission of some, or all, of this
22 data to CIQ and and/or HTC without Plaintiff's knowledge, consent or permission
23 violated 18 U.S.C. § 2511;
24 c. There are no previously adjudicated actions against Carrier IQ, Inc. and HTC
25 America, Inc. on whether Defendants' interception, tracking, recording, and
26 logging of their consumers' activities, keystrokes, button presses, and searches,
27 including but not limited to, Google searches, emails, phone numbers dialed,
28 location and text messaging contents and transmission of some, or all, of this

1 data to CIQ and/or HTC without Plaintiff's knowledge, consent or permission
 2 violated 18 U.S.C. § 2701; and

- 3 d. There are no previously adjudicated actions against Carrier IQ, Inc. and HTC
 4 America, Inc. on whether Defendants' interception, tracking, recording, and
 5 logging of their consumers' activities, keystrokes, button presses, and searches,
 6 including but not limited to, Google searches, emails, phone numbers dialed,
 7 location and text messaging contents and transmission of some, or all, of this
 8 data to CIQ and/or HTC without Plaintiff's knowledge, consent or permission
 9 violated 18 U.S.C. § 1030.

10 42. Aggregating this litigation in this forum is desirable because Defendants' alleged tortious
 11 conduct has been regular and systematic in Santa Clara County, California and, upon
 12 information and belief, hundreds, if not thousands, of individuals have been harmed in
 13 Santa Clara County, California by Defendants' actions.

14 43. No difficulties will be encountered in the management of Plaintiff's claims on a Class
 15 basis because the Class is readily definable and the prosecution of this lawsuit as a Class
 16 Action will ensure the most efficient redress of harm and reduce the possibility of
 17 repetitious litigation.

18 TYPICALITY

19 44. Plaintiff's claims are typical of absent Class Members' claims because all of the members
 20 of the Class have been similarly affected by Defendants' interception, tracking,
 21 recording, and logging of their activities, keystrokes, button presses, and searches,
 22 including but not limited to, Google searches, emails, phone numbers dialed, location
 23 and text messaging contents and transmission of some, or all, of this data to CIQ, and/or
 24 HTC without the consumers' knowledge, consent or permission.

25 ADEQUACY OF REPRESENTATION

26 45. Plaintiff's interests are common to, and coincide with, those of all absent Class
 27 Members because by proving their individual claims they will necessarily prove
 28 Defendants' liability as to the Class claims.

1 46. In addition, Plaintiff's interests and claims are not antagonistic to those of any other
2 Class Members, nor are they subject to any unique defenses.

3 47. Plaintiff is also cognizant of, and determined to faithfully discharge, her fiduciary duties
4 to the absent Class Members if appointed Class Representative.

5 48. Plaintiff will, therefore, fairly and adequately protect the interests of absent Class
6 Members. She is also committed to the vigorous prosecution of this action and, to do
7 so, have retained competent counsel who are experienced in Class Action litigation.

8 **SUPERIORITY**

9 49. A Class Action is superior to other available methods for the fair and efficient
10 adjudication of this controversy. The expense and burden of individually litigating
11 whether Defendants' actions violated applicable federal laws make it effectively
12 impossible for individual Class Members to seek redress in the courts for the wrongs
13 complained of herein.

14 50. Moreover, since Plaintiff seeks an Order that Defendants' actions violated applicable
15 federal laws, this matter can only be efficiently handled as a class-based action, since
16 the determination of impropriety will decide that issue with respect to all members of
17 the Class. The alternative would be for each and every other Class Member to file an
18 individual suit for damages once the Court finds Defendants' actions to be improper and
19 a breach of the applicable federal laws. This alternative is not only impractical and
20 inefficient, it would likely result in a miscarriage of justice since only class treatment
21 ensures that each Class Member receives notice of their right to damages.

22 51. Class treatment, therefore, ensures uniformity and consistency in results; enables the
23 many small claims of Class Members to be brought efficiently; and will provide optimum
24 notice and damages to Class Members.

25 52. The advantages of maintaining this lawsuit as a Class Action, therefore, far outweigh the
26 alternative – the waste and expense of hundreds, if not thousands, of separate
27 adjudications for damages. A Class Action is clearly the superior vehicle for adjudicating
28 these claims.

MANAGEABILITY

53. There are no unusual difficulties likely to be encountered in the management of this action as a Class given the finite issues and limited discovery necessary to establish both the appropriateness for certification and the merits of this matter. This Court can, therefore, effectively manage the Class Action.

COUNT I

VIOLATION OF THE FEDERAL WIRETAP ACT, 18 U.S.C. § 2511

54. Plaintiff incorporates by reference paragraphs 1 - 53 above as though fully set forth herein and further alleges:

55. The Federal Wiretap Act, as amended by the Electronic Communications Privacy Act of 1986, prohibits the willful interception of any wire, oral, or electronic communication and the disclosure of its contents to anyone apart from its intended recipient.

56. 18 U.S.C. § 2520(a) provides a private right of action to any person whose wire, oral or electronic communication is intercepted.

57. Defendants CIQ and HTC placed monitoring software developed by CIQ on Plaintiff's cellular phones in order to intercept, monitor, track, record, log and transmit the contents of Plaintiff's electronic communications to unauthorized third parties, including the activities, keystrokes, button presses, and searches of Plaintiff.

58. Neither the Plaintiff nor members of the Class consented to nor were aware that the Defendants were violating the Federal Wiretap Act, as well as each Defendant's own, individual privacy policies, and tracking Plaintiff's activities, keystrokes, button presses and searches.

59. The intercepted data, including but not limited to, the activities, keystrokes, button presses and searches of Plaintiff, are "communications" within the meaning of the Wiretap Act.

60. Defendants intentionally and willfully placed the monitoring software on Plaintiff's cellular phones and, thus, intentionally and willfully intercepted the electronic communications of Plaintiff and other members of the Class.

1 61. Plaintiff is a person whose electronic communications were intercepted within the
2 meaning of Section 2520.

3 62. Section 2520 provides for preliminary, equitable and declaratory relief, in addition to
4 statutory damages of the greater of \$10,000 or \$100 a day for each violation, actual and
5 punitive damages, reasonable attorneys' fees, and disgorgement of any profits earned
6 by Defendants as a result of the above-described violations.

7 63. Plaintiff and other members of the Class were harmed by Defendants' violations, and
8 are therefore entitled to statutory, actual and compensatory damages, injunctive relief,
9 punitive damages, and reasonable attorneys' fees.

10 **COUNT II**

11 **VIOLATION OF THE STORED ELECTRONIC COMMUNICATIONS ACT**

12 **18 U.S.C. § 2701**

13 64. Plaintiff incorporates by reference paragraphs 1 - 53 above as though fully set forth
14 herein and further allege:

15 65. The Stored Electronic Communications Act ("SECA") provides a cause of action against a
16 person who intentionally accesses without authorization a facility through which an
17 electronic communication service is provided or who intentionally exceeds an
18 authorization to access that facility and thereby obtains, alters or prevents authorized
19 access to a wire or electronic communication while it is in storage in such a system.

20 66. "Electronic storage" is defined in the statute to be "any temporary, immediate storage
21 of a wire or electronic communication incidental to the electronic transmission thereof."

22 67. Plaintiff's cellular telephones are facilities through which electronic communications
23 services are provided under SECA.

24 68. Defendants intentionally placed monitoring software on Plaintiff's cellular phones that
25 accessed their stored electronic communications without authorization, and thus
26 violated SECA.

1 69. Plaintiff and other members of the Class were harmed by Defendants' violations, and
2 are therefore entitled to statutory, actual and compensatory damages, injunctive relief,
3 punitive damages, and reasonable attorneys' fees.

4 **COUNT III**

5 **VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT, 18 U.S.C. § 1030**

6 70. Plaintiff incorporates by reference paragraphs 1 - 53 above as though fully set forth
7 herein and further allege:

8 71. Plaintiff's cellular telephones are protected computers under the Computer Fraud and
9 Abuse Act.

10 72. Plaintiff's phones were intended to be used and were used for interstate commerce or
11 communication.

12 73. Defendants knowingly caused the transmission of a program, information, code, or
13 command to and from the Plaintiff's cellular telephones, and as a result, of such
14 conduct, intentionally caused damage without authorization, to a protected computer.

15 74. Defendants, therefore intentionally accessed a computer used for interstate commerce
16 or communication, without authorization or by exceeding authorized access to such a
17 computer, and by obtaining information from such a protected computer in violation of
18 the Computer Fraud and Abuse Act.

19 75. Plaintiff was directly and proximately damaged in the amount she paid for her cellular
20 phones, as well as the repeated violations of her privacy.

21 76. Defendants' unlawful access to Plaintiff's computers and communications have
22 therefore caused damages, as well as irreparable injury to Plaintiff's privacy. Unless
23 restrained and enjoined, Defendants are likely to continue to commit such acts.
24 Plaintiff's remedies at law are not adequate to compensate for these inflicted and
25 threatened injuries, entitling Plaintiff and the Class to remedies including injunctive
26 relief as provided by 18 U.S.C. § 1030(g).

COUNT IV

CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200, et seq. (UCL)

77. Plaintiff repeats and re-alleges every allegation above as if set forth herein in full.

78. Plaintiff is entitled to assert claims against Defendants under California law because Carrier IQ is based in California and because the conduct at issue in this action either occurred in California by virtue of the centralized business practices of Carrier IQ, or arose as the result of policies and procedures that originated from Carrier IQ's home offices in California. Further, the wrongful scheme at issue herein was planned and implemented by the Defendants in California.

79. The majority of wrongful acts complained of emanated from or occurred in California including, without limitation, the development of the Carrier IQ software at issue, and the plan to secretly embed that software in mobile devices without the knowledge of device users.

80. California Business & Professions Code §§ 17200 et seq. (the "Unfair Competition Law" or "UCL") is a consumer protection statute that prohibits any "unlawful, unfair or fraudulent business act or practice." The UCL authorizes this Court to issue whatever orders or judgments may be necessary to prevent unfair or unlawful practices, or to "restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition." *Id.* § 17203.

81. Defendants engaged in *unlawful* conduct in violation of the UCL in that the acts and practices alleged herein violate the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, the Electronic Communications Privacy Act, 18 U.S.C. § 2510, the California Computer Crime Law and the Stored Communications Act among other statutes.

82. Defendants engaged in *unfair* business acts and practices in violation of the UCL by, among other things: (a) secretly embedding software in mobile devices that is designed to provide Defendants with information about the user's private communications; (b) failing to provide notice that such software is embedded on mobile devices; (c) failing to provide a mechanism for mobile device users to remove such software from mobile

1 phones or to render it inoperable; (d) failing to disclose that private information of
2 mobile device users would be collected, stored and/or used for commercial purposes;
3 and (e) failing to remedy its violations of law upon reasonable notice.

4 83. The foregoing acts and practices violate the right of privacy protected by the California
5 Constitution, were likely to mislead the public as to the privacy of their personal
6 communications, and were unjustified by any legitimate business need.

7 84. There were reasonably available alternatives to further Defendants' legitimate business
8 interests, other than the misconduct described herein.

9 85. Defendants engaged in *fraudulent* business acts and practices in violation of the UCL in
10 that Defendants' collection and dissemination of the information regarding their
11 customers' cell phone use was knowingly hidden and concealed.

12 86. By reason of the foregoing, Defendants have been unjustly enriched at the expense of
13 Plaintiffs and the Class and should be required to make restitution to the Plaintiff, the
14 general public and the members of the Class, and/or be enjoined from continuing in
15 such practices, pursuant to §§ 17203 and 17204 of the California Business & Professions
16 Code. Among other things, the Defendants charged the Plaintiff more for the devices
17 with the Carrier IQ software embedded than they would have charged for the same
18 devices without the hidden software. Further, some Defendants, or all of them,
19 received compensation in exchange for secretly recorded information.

20 87. The foregoing acts and practices have caused substantial harm to the Plaintiffs, the
21 general public, and the members of the class. As a result of these violations and
22 unlawful, unfair, and fraudulent business practices, Plaintiff suffered injury in fact and
23 lost money, including but not limited to, payment of amounts greater than the fair value
24 of the products at issue without the hidden software.

25 88. Pursuant to California Business and Professions Code § 17200 et seq., Plaintiffs are
26 entitled to enjoin Defendants' practices.

27 89. Pursuant to Code of Civil Procedure § 1021.5, Plaintiffs are entitled to recover
28 reasonable attorney's fees, costs, and expenses incurred in bringing this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Determine that this action is a proper Class Action under Rule 23 of the Federal Rules of Civil Procedure;
- B. Award compensatory damages, including statutory damages where available, in favor of Plaintiffs and the other members of the Class against Defendant for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- C. Order the Defendants to disgorge all profits earned from their illegal wiretapping;
- D. Enter declaratory and injunctive relief, permanently restraining Defendants, and their officers, agents, servants, employees and attorneys, from monitoring, tracking, recording, logging and transmitting the activities, keystrokes, button presses, and searches of Plaintiffs and members of the Class and otherwise violating Defendants' policies with their consumers;
- E. Award Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;
- F. Award exemplary, treble or punitive damages;
- G. Award reasonable attorneys' fees and costs; and
- H. Grant Plaintiff such further relief as the Court deems appropriate.

JURY TRIAL DEMAND

The Plaintiff demands a trial by jury of all issues so triable.

Respectfully submitted by:

DATED: January 18, 2011

McNULTY LAW FIRM

By: 

Peter J. McNulty

Brett L. Rosenthal

Attorneys for Plaintiff and

Members of the Class